

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 786 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ANJAR MUNICIPALITY

Versus

GL BHAGAT, COLLECTOR, KUTCH & BHUJ & ORS.

Appearance:

MR YS MANKAD for Petitioner

MR HL JANI for Respondent No. 1 & 2

MR DM THAKKAR for Respondent No. 3 & 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. Challenge is made by the petitioner to the order dated 14th August 1984 of the Collector, Kutch-Bhuj, and that of State Government dated 2nd April 1985, made in the proceedings initiated against the petitioner under Section 250(1) of the Gujarat Municipalities Act, 1961.

3. The facts of the case, in brief, are that in the year 1956, there had occurred a severe earthquake in the town of Anjar and for rehabilitation of the sufferers of earthquake a Central Earthquake Relief Committee was formed, which committee raised funds from the donations from the public and constructed 344 tenements for the earthquake stricken families and had delivered those tenements to the Government for management. On 6th December 1962 the Government of Gujarat transferred those tenements to the Gujarat Housing Board as the asset of the Board. Then the Housing Board showed willingness to hand over the tenements to the Government. Accordingly the possession of the tenements has been taken over by the Collector, Kutch, from the Board on 20th August 1969. The Collector, in turn, handed over those tenements to the petitioner on 22nd May 1969 in anticipation of issue of final orders of the Government in that behalf. There is no dispute that the final order has been made in this respect by the Government on 18th November 1969 and the ownership of the said tenements alongwith the land of Survey No.314-315 admeasuring about 51600 sq.yards on which these tenements were constructed was ordered to be transferred to the petitioner-Municipality. The petitioner has come up with the case that it was a complete contract between the State and the Municipality and both the parties were bound to the terms and conditions thereof. One of the condition of this contract was that the Municipality will be the owner of the property and will be competent to deal with the same. Further condition of the contract was that the Municipality shall manage the tenements as its own property and shall dispose of the same but should not create a reserve fund for addition and replacement of those tenements. In pursuance of the aforesaid Government Resolution and the agreement, the petitioner passed a Resolution No.72 on 15th December 1969 complying with all the terms and conditions laid down under the aforesaid Resolution. The petitioner made a grievance in this petition that after seven years because of political reasons and there being emergency and just to harass the petitioner which was at that time in the opposite camp of the then ruling Congress party at the centre, the Under Secretary of the Government of Gujarat in the department concerned, under its letter dated 23rd December 1976, sought to impose fresh terms and conditions by raising absolutely false allegations. The petitioner had resented to the aforesaid letter by sending reply to it on 17th February 1977. All the allegations made against the petitioner have also been controverted. One of the facts has been given out that the Central Earthquake

Relief Committee had itself leased out the tenements to the persons other than the earthquake affected people. It has further been stated that the housing board has also allotted certain premises by drawing public lots and the tenements were handed over to the Municipality, more than 30% of the tenements were in possession of tenements other than the earthquake sufferers. Further fact has been stated that the petitioner has not let out or sold tenements to its own employees. Time was sought by the President of the petitioner for personal representation. The Association of tenants of the premises through one representative Shri Illias Ebrahim Khatri, made a request to convert their tenancy rights on hire purchase basis. After having deliberations with the tenants' association, the Chief Officer prepared a scheme for grant of tenements to the tenants who were in possession and occupation for more than 15 years. The Board considered the proposals in the scheme. The Board has then passed a Resolution dated 14th September 1977 for granting premises on hire purchase basis. Under the order dated 24th October 1977, the Collector, Kutch-Bhuj, under Section 258(1) of the Gujarat Municipalities Act, stayed the implementation of the Resolution of the Municipality dated 14th September 1977, i.e. the Resolution under which it has resolved to give out tenements to the tenants on hire purchase basis. Being aggrieved of the aforesaid order of the Collector, the petitioner approached this Court by filing Special Civil Application No. 1877 of 1977 under Article 226 of the Constitution of India for a writ of Mandamus quashing, cancelling and setting aside the aforesaid order. This Court has remanded the matter to the Collector for fresh inquiry. On remand, the Collector, Kutch-Bhuj, after hearing the petitioner under its order dated 14th August 1984, cancelled the Resolution of the petitioner dated 14th September 1977. The matter was taken by the petitioner under Section 258(3) of the Gujarat Municipalities Act to the State Government which was heard by the Director of Municipalities, Ahmedabad, and under its order dated 2nd April 1985, dismissed the application of the petitioner. Hence this Special Civil Application before this Court.

4. After filing of this petition, the petitioner prayed for the amendment of this Special Civil Application which has been granted by this Court. By this amendment, further pleadings have been given by the petitioner which are also to be taken briefly. On 29th June 1983, the Municipality passed a Resolution No.63 about allotting the tenements at the price of Rs.15,000/- for two rooms and Rs.10,000/- for one room etc. Some of the persons effected by the said Resolution

approached to the Collector that the price was too high and the Municipality should reduce the price. The Collector therefore addressed a letter dated 15th December 1983 directing the Municipality to reduce the price as the price fixed on the higher scale. Thereupon complying with the request of the persons and also the request of the Collector, the Municipality reduced the price from Rs.15,000/- to Rs.10,000/- for two rooms and from Rs.10,000/- to Rs.7,000/- for one room tenement by a Resolution No.186 dated 12.3.84. The contention raised by the petitioner by this amendment is that the Collector himself has approved this action of the petitioner of selling the tenements to the occupants and as such, the order of the Collector setting aside the Resolution of the Municipalities dated 14th September 1977 is not correct.

5. This Special Civil Application was contested by the respondent. A reply to the Special Civil Application has been filed and the order passed by the Collector and the State Government were supported.

6. The learned counsel for the petitioner contended that the Collector and the State Government have committed serious illegality in cancelling the Resolution of the Municipality dated 14th September 1977. The tenements were vested in the Municipalities and it has all the power and competence to dispose of the same in a reasonable manner. It has next been contended that the Collector himself has approved giving the tenements to the tenants in the year 1983 on hire purchase basis and as such, the order of the Collector cannot be maintained.

7. On the other hand, the learned counsel for the respondent has supported the orders made by the collector and District Magistrate.

8. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

9. At the outset it is to be noticed that the respondents have not filed reply to the amended writ petition and as such, the averments made therein stand uncontroverted. The tenements have been constructed undisputedly for the rehabilitation of sufferers of earthquake, but it appears that both the Housing Board as well as the Municipality have misused these tenements as those tenements were let out to the persons other than the sufferers of the earthquake. There is some justification in the allegations of the respondents that the Municipality has also made attempt to allot those

tenements to its own employees. How a good cause and scheme is frustrated at the hands of the District level authorities, the Government, the statutory authorities etc., which clearly comes out from the facts of the present case. It is a case where the people have utilized these tenements which have been constructed by a society by taking funds from public for benefits of sufferers of earthquake for their own benefits and gains. It is an admitted case that the occupants of the tenements are not sufferers of earthquake of Anjar. The Government has given these tenements to the Municipality for their best utilization and to fulfil the purpose and object of the construction thereof. That Resolution itself gives out that in the tenements, the tenants were there and right has been given to the Municipality to recover the arrears of rent from the holders of the tenements. But one thing is very clear that for whatever reason, those persons are occupying the tenements for the last many years. Those persons may also be people belonging to lower-middle income group and now to dispossess them from the tenements will certainly cause great loss to them. Apart from this, in case now these tenements are allowed to be auctioned, then it may result in disturbances to public peace. If this course is adopted then the real persons entitled for the tenements may get it or not, but the occupiers thereof for the last many years will be disturbed. These persons may also not vacate the tenements and further looking at the fact that the tenants are there, other persons may not go to participate in the auction. So the approach should be to see that the occupiers of these tenements are not disturbed, and at the same time it should be seen that they are not put to their own terms to the Municipality or the State Government. Whatever terms which have been imposed in the year 1977, now if given effect to, the implementation thereof may be difficult and many other complications may arise. It is also not brought on the record how the remaining tenements have been dealt with by the Municipality. Taking into consideration all these facts and circumstances and the order of the Collector dated 15th December 1983 whereunder the price of the tenements have been reduced, the matter needs to be considered afresh by the State Government. The amount which has been fixed by the Municipality earlier and the modified price in pursuance of the order of the Collector may not be reasonable and the same may be charged or not at a reduced rate are the questions which are to be gone into by the State Government. The Government has also to consider whether the insistence and implementation of policy as suggested under the letter dated 23rd December 1976 as sought to be imposed in the form of fresh terms

and conditions is in the larger interest of public or not. Further consideration is to be made whether the tenants who are occupying the tenements for the last many years now should be disturbed or not. Though this Court is suggesting this course under the compelling circumstances that these tenants are there in occupation for many years and further that the Government itself has not taken care at appropriate time to see that those tenements are not used by the persons other than for whom they were constructed. At the inception of scheme nobody has taken care at the Government level as well as the District level to see that the tenements are put to use for which the same have been constructed. How casually the matter has been dealt with, clearly comes out from the fact that the Government has given these tenements to the Gujarat Housing Board and in turn, the Gujarat Housing Board returned them back to the Government and then the Government has given them to the Municipalities. The Government should have monitored the affairs of allotment of tenements to the deserving persons for whose benefits they were constructed. In fact, it is a case where the functionaries and officers responsible have proceeded in the manner to frustrate the very purpose and object for which these tenements were constructed. Now at this stage, it is too difficult to restore the situation and if any attempt is made, then it will certainly make things worse and a certain class of persons will be affected.

10. In the result, this writ petition succeeds and the order of the State Government dated 14th August 1984 is quashed and set aside and the matter is sent back to it to give fresh consideration and if necessary, after hearing the tenement occupiers/holders. The State Government shall be at liberty to decide reasonable price to be taken from the tenement holders. The State Government shall further go into the question as to what has been done with the remaining tenements by the Municipality. This exercise should be undertaken by the Government within a period of six months from the date of receipt of certified copy of this order. Rule made absolute in aforesaid terms with no order as to costs.

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(sunil)